SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 4

EVELYN TREINIES,

Petitioner,

vs.

SUNSHINE MINING COMPANY, KATHERINE MASON, T. R. MASON, LESTER S. HARRISON, GRACE G. HARRISON, WALTER H. HANSON, EDNA B. HANSON AND F. C. KEANE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITIONER'S OPENING BRIEF.

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INDEX.

Subject Index.

TABLE OF CASES CITED IN BRIEF.

TABLE OF TEXT BOOKS CITED IN BRIEF.

TABLE OF STATUTES CITED IN BRIEF.

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PETITIONER'S OPENING BRIEF.

Opinions Below.

The opinion of the Circuit Court of Appeals is reported in 99 Federal Reporter (2nd series) 651. The opinion of the District Court of the United States for the District of Idaho is reported in 19 Federal Supplement 587.

Statutes Involved.

Federal Interpleader Act (Section 24 (26) of the Judicial Code as amended Jan. 20, 1936, c. 13, § 1, 49 Stat. 1096; 28 U. S. C. A. subdivision (26) of § 41); Art. IV, par. 6,

Constitution of State of Washington; § 1533, Remington's Revised Statutes of Washington; Constitution of the U. S., Article II, sec. 2; Article IV, sec. 1; and Amendments XI and XIV.

Jurisdiction.

Petitioner invokes the jurisdiction of this Court under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A. Sec. 347 (a)).

Cases Sustaining Jurisdiction.

The following cases sustain the jurisdiction of this Court in the premises: *Worcester County, etc.*, v. *Riley*, 302 U. S. 292, 85 L. Ed. 268, 58 Sup. Ct. Rep. 184; *Sanders* v. *Armour Fertilizer Works*, 292 U. S. 190, 78 L. Ed. 543, 91 A. L. R. 950.

Assignment of Errors.

1. The Circuit Court of Appeals erred in determining that the District Court had jurisdiction of the action under the Interpleader Act.

2. The court erred in holding that the judgment of the courts of the State of Idaho was determinative of the issue of ownership, thereby ignoring the judgment of the courts of the State of Washington affecting the same subject matter and parties.

3. In an action brought under the Interpleader Act wherein it was necessary to determine which of two opposing judgments of two different States should be given effect, assuming jurisdiction in the Federal District Court so to determine, it was error for the Circuit Court of Appeals to refuse to consider the issues of fact and the applicable laws of the two States in order to determine whether they acted with or without jurisdiction.

4. The Circuit Court of Appeals and the District Court erred in not holding that, for the purpose of determining the meaning of the laws of the State of Washington, the laws and the decisions of the courts of that State must be given effect in preference to the interpretation of those laws by the courts of some other State.

5. The Circuit Court of Appeals erred in not reversing the judgment of the District Court and in failing to hold that the decisions of the Washington courts were first as to time and prior and exclusive as to jurisdiction.

Statement of the Case.

The facts in connection with this litigation are complicated and cover a long period of time. Having in mind that this Supreme Court is interested, not so much in settling litigated questions between individuals as in settling questions which involve either a principle of Federal law or practice, a constitutional question, or an important Federal question affecting the people in general or bearing on procedural matters of general interest, we shall state only facts emphasizing such points.

The printed record herein, embracing proceedings in not less than seven different courts, is so voluminous, that, as is readily seen, this Court, and the attorneys herein, may easily become so led astray in a mass of immaterial matter, as entirely to lose sight of the salient points of the present case. Counsel for petitioner firmly believe that the lower courts involved herein, because of the confusion mentioned above, lost sight of the material points of the case. Having the foregoing considerations in mind, counsel for petitioner herein proposed a record which they thought fair to both parties herein, and calculated to present clearly to this Court all essential questions at issue herein. Respondents, however, insisted on their right to include in the record

a mass of material which counsel for petitioner believed totally unnecessary to present such issue, because tending merely to provoke comment in the proceedings of the trial and Supreme Courts of the two States concerned, and to becloud the issues presented in this present petition.

In *Asher* v. *Bone,* 100 F. (2d) 315, 317, the United States Circuit Court of Appeals, referring to certain proceedings in a State trial court, held: that "errors • • • occurred in the • • • proceedings that would have called for a reversal on a direct appeal" but also held that, nevertheless, "it is not for this Court to correct its error" (*i.e.,* the error of the State trial court), and also held that "the determination • • • by such • • • Court (*i.e.,* the State trial court), whether right or wrong, is conclusive and subject only to be reversed, set aside or modified on appeal".

Counsel for petitioner therefore, in this brief, will adhere to the principles expressed in *Asher* v. *Bone, supra,* and will not permit themselves to be sidetracked into commenting on any act, or proceeding, of either the Washington or Idaho trial or Supreme Courts, not germane to the Federal questions involved in this petition.

Proceedings were begun in the Superior Court of Washington in April, 1922, to probate the will of Amelia Pelkes, a resident of that State, who died the owner of 30,598 shares of the capital stock of Sunshine Mining Company, a Washington corporation, having its principal place of business at Yakima, Washington (R. 263-265, inc.). This and all subsequent references are to printed pages of the Transcript of Record herein.

On August 9, 1923, a decree of distribution was entered by the said Superior Court, sitting in probate, distributing all of the estate "hereinafter particularly described • • • and any other property not now known or described, which

may belong to said estate • • •" The estate proceedings were, however, not closed (R. 123).

The present controversy concerns only 15,299 shares of the Sunshine Mining Company stock.

We shall hereafter refer to the Pelkes-Treinies litigants as the "Washington Group" and to the Masons, and those claiming under them, as the "Idaho Group".

On August 4, 1934, the Idaho Group filed an action in the Courts of Idaho against the Washington Group and the Sunshine Mining Company (R. 126), claiming ownership in the remaining 15,299 shares of stock under an alleged oral agreement under which the Washington Group was claimed to have held the stock in trust for the Idaho Group. The Washington Group appeared in the Idaho action and denied the facts and the jurisdiction of the Idaho Court, basing their denial of jurisdiction on the fact that the matter had originally been and still was within the jurisdiction of the Washington Court, sitting in probate, the estate proceedings never having been closed. (See Findings of Fact and Conclusions of Law, Idaho State District Court, R. 152-165; Opinion of Idaho Supreme Court, R. 167-192.)

Thereupon, on December 19, 1934, the Idaho Group filed a petition in the Washington probate proceedings wherein they alleged that the executor had failed to have the proceedings closed and also that the Sunshine stock was an uninventoried and *undistributed* asset of the estate which Katherine Mason of the Idaho Group claimed to own by virtue of an alleged oral agreement of partition made subsequent to the decree of distribution in 1923. They prayed for

> "the removal of John Pelkes as executor • • • and the appointment of an administrator • • • to complete the administration of the estate." (R. 288 par. 9.)

John Pelkes, the executor, opposed the petition and claimed the stock as his own under the said agreement, asserting that

he had in 1923 given Katherine Mason, in full settlement, the more valuable half of the property of the estate instead of the one-quarter distributed to her and that he had kept certain valueless items, including all of the uninventoried Sunshine stock. (R. 290 par. 10.)

Despite their said petition in the Washington probate proceedings, the Idaho Group petitioned the Supreme Court of Washington for a writ of prohibition to prohibit the Washington Superior Court from continuing with the *probate proceedings*, alleging lack of jurisdiction in the Washington Superior Court, sitting in probate, and asserting sole jurisdiction in the Idaho courts. This petition was denied; the jurisdiction of the Washington Superior Court was sustained; that of the Idaho court was denied. (See Answer of Judge Hawkins, R. 15, *et seq.*)

Thereafter the Washington Superior Court, after a hearing, awarded the Sunshine stock to Pelkes' transferee, Evelyn Treinies, petitioner herein (the Washington Group), restrained the Idaho Group from further litigating the matter in any court (R. 291 par. 11), and finally closed the estate, on May 31, 1935. (R. 282, 298.) No appeal was taken by the Idaho Group.

The Idaho action was then still pending and involved exactly the same issues as to the Sunshine stock as had been determined in the Washington probate proceeding.

In the Idaho action, on September 28, 1935, part of the stock was adjudged to be the property of the Idaho Group, and the balance, the property of the Washington Group. On appeal, the Supreme Court of Idaho, on July 23, 1936, modified the decision and awarded ALL of the stock to the Idaho Group. Each of the Idaho courts considered the jurisdiction of the Washington court, and denied it. (See Opinion, Idaho Supreme Court, R. 167; also R. 347, 352.)

At this point, accordingly, we have a probate decree in Washington, PRIOR IN DATE, AND BASED ON PRIOR JURISDIC-

TION OF THE RES AND OF THE ESSENTIAL PARTIES IN THE WASHINGTON AND IDAHO GROUPS, declaring the Washington Group owners of the Sunshine stock, and a later judgment, based on a later jurisdiction, of the Idaho court, directly to the contrary, declaring the Idaho Group owners. In each state the jurisdictional points were passed on by the state's Supreme Court either before or after the judgment, and the courts of each state considered, and denied, the jurisdiction of the courts of the other state.

Subsequently on August 12, 1936, Pelkes (of the Washington Group) instituted an action in equity in the Washington Superior Court against the Idaho Group *and the Sunshine Mining Company,* to enforce the decree of the Washington Court made in the probate proceedings. (R. 244.) Pelkes having died, the administrator of his estate was substituted in his stead as plaintiff and an amended complaint was filed. (R. 256.) The proceedings in this equity case were pending when further action was restrained by injunction issued by the U. S. District Court in the present action. In the equity case the Washington court, through its receiver, assumed control of the stock. (See Answer of Judge Hawkins, R. 17, 24; Answer of Cheney, Receiver, R. 46, 49(2).) Technically the stock was never in the possession of the Sunshine Mining Company, although the accrued dividends were.

At this juncture the Sunshine Mining Company filed the present action which was a bill of interpleader in the United States District Court for the District of Idaho, Northern Division, filed under the Interpleader Act, 28 U. S. C. A. Sec. 41, subd. 26, enacted January 20, 1936. (R. 1.) (The District Court decision is reported in 19 Fed. Supp. 587.)

The bill of interpleader included as defendants not only the Washington and Idaho Groups, but also the Hon. A. W. Hawkins, as Judge of the Superior Court of the State of Washington, before whom the equity case was pending,

John Cheney, the receiver appointed in that case, to take into his possession petitioners' interest in the stock, and Seattle First National Bank, administrator of the estate of John Pelkes, deceased. It prayed that they, the judge, the receiver and the administrator, be restrained from performing their judicial duties with reference to the stock. Obviously such procedure is an interference by a Federal court with the judicial proceedings of a state, prohibited by the Eleventh Amendment to the U. S. Constitution. It is also an effort by a corporation which has been a defendant in litigation concerning the same res and between the same parties in two different states, wherein diametrically opposite judgments have been rendered, to have a Federal District Court, under the Interpleader Act, decide which of the two state courts' judgments must be obeyed.

The judgments of both the Washington (R. 6(16)) and the Idaho Courts (R. 3(11)) were pleaded in the interpleader suit.

First in order of time, and on the basis of a prior jurisdiction, the Washington Courts held that the Idaho Courts had no jurisdiction of the SUBJECT MATTER and gave judgment in favor of the Washington Group. (See Judge Lindsley's Findings and Order Approving Partition, etc. R. 282, 292; p. 14 of order.) The Idaho courts subsequently held that the Washington courts had no jurisdiction and gave judgment in favor of the Idaho Group. (R. 152; R. 167; R. 192) Each State's courts enjoined the parties from the other State from proceeding in the courts of that other State. Each State's courts would undoubtedly punish the petitioner (Sunshine Mining Company) for a violation of its order and would endeavor to enforce its judgment unless restrained by a decree of Federal authority, provided the Federal courts had jurisdiction so to restrain.

Such protection the Sunshine Mining Company has sought by filing this action. But the Circuit Court of Ap-

peals on the appeal herein has decided that "the issue • • • could not be relitigated" because *one of the States* (Idaho) had determined the issue. It fails to say, and, in effect, refuses to say, why Idaho's determination of the issue deserves Federal protection and Washington's does not.

The decision in the Circuit Court of Appeals said:

> "The stock in controversy was formerly the property of John Pelkes and his wife, Amelia Pelkes, residents of Washington. Amelia Pelkes died testate on April 24, 1922. Her will was admitted to probate in a State Court of Washington. Being community property the stock became, for purposes of administration, a part of her estate. In the Interpleader suit, it was alleged by appellants that the stock had not been distributed, but was still in custody of the Washington court, and that, therefore, the Idaho Court had no jurisdiction to entertain the Idaho suit. The Masons denied these allegations and alleged that the stock was distributed on August 9, 1923, eleven years before the Idaho suit was commenced. That issue—as to when the stock was distributed—had been raised by Pelkes in the Idaho suit. The Idaho Court was empowered to determine that issue and did determine it in favor of the Masons, holding that the stock was distributed on August 9, 1923. *The issue thus determined could not be relitigated in the Interpleader suit.*" (Italics ours.)

The Circuit Court of Appeals said "The Idaho Court was empowered to determine that issue" and cited *Pendleton* v. *Russell,* 144 U. S. 640, 644, as authority. We will demonstrate hereinafter that that case is direct authority in favor of our contentions herein.

The Circuit Court of Appeals' decision places the Federal jurisdiction in an absurd position. It says, in effect:

> "It is our duty to determine which of these opposing state courts is correct. But we refuse to decide that question, and, since Idaho says Washington had no jurisdiction, and since we have decided that we will not examine the facts that would determine which state

> is right ('relitigate the issue') we decide for Idaho. Idaho's determination that Washington had no jurisdiction will be sustained because Idaho has so decided; Washington's determination that Idaho had no jurisdiction will *not* be sustained *because Idaho has so decided.*"

That is really the logic of the decision.

If the United States courts have jurisdiction under the Interpleader Act, then the error of the Circuit Court of Appeals lies in this: that, having the duty to determine which of two inconsistent judgments rendered in different States was entitled to full faith and credit in the territory of the other, and also to determine which judgment was entitled to recognition by the Federal courts, it failed to make an examination of the LAWS OF BOTH States and the jurisdictional FACTS of the cases, in order to determine which State, if either, had controlling jurisdiction. A decision favoring the judgment of either State WITHOUT an examination of the jurisdictional facts in both cases and the laws of both States was obviously an ARBITRARY and erroneous act, which should be reversed by this Supreme Court, because by their decisions herein complained of the U. S. District Court and Circuit Court of Appeals have denied to the Courts of the State of Washington the full faith and credit accorded them by Art. IV, Sec. 1 of the U. S. Constitution.

In both the U. S. District Court and the Circuit Court of Appeals the question of the jurisdiction of those courts to interfere with the performance of the acts of the judicial officers of the State of Washington was presented and considered. However, neither court commented on those questions.

The immunity of the exclusive jurisdiction of the courts of Washington, to impound, control and quiet title to stock in a corporation over which it had jurisdiction, from interference either by the courts of another State or of the Fed-

eral courts, was urged in both the U. S. District Court and the Circuit Court of Appeals and is not being raised for the first time here. (See Supplemental Assignment of Error, filed with permission in the Circuit Court of Appeals (R. 345), and Answers of Judge Hawkins (R. 15, 24(b)) and Receiver Cheney, (R. 46).

Questions Presented.

1. The U. S. District Court held that, because the Idaho Supreme Court, had the parties before it, including the petitioner in interpleader, and had adjudged the ownership of the property to be in one of the parties defendant, the petitioner in interpleader was by reason of that judgment barred from bringing the interpleader action in so far as it sought to obtain a decree contrary to the Idaho decree. The record shows that the same parties, including the petitioner in the interpleader suit, appeared before the courts of the State of Washington, which had prior and exclusive jurisdiction over the property and parties, and that a judgment contrary to the Idaho judgment was rendered by the Washington courts. Such being the case, was not the Washington judgment equally a bar to the interpleader action in so far as such action sought a decree contrary to the Washington decree?

Therefore is not this interpleader suit merely an effort to seek a judgment in a U. S. court, which, in cases involving no Federal question, has only concurrent jurisdiction with a State court, for the purpose of overruling the judgment of a State court, a proceeding clearly beyond the jurisdiction of the Federal courts and in violation of Article IV, Section 1, and also of the Eleventh Amendment to the U. S. Constitution?

The U. S. District Court, in asserting jurisdiction of the interpleader suit, relied on two erroneous findings.

FIRST. It found that the decision of the Supreme Court of Idaho, which held that the Washington Superior Court, sitting in probate, was without jurisdiction to make its decree of May 31, 1935, and that exclusive jurisdiction was in itself, had been AFFIRMED by the Supreme Court of the United States BECAUSE that court had denied a petition for a writ of certiorari seeking to review the Idaho Supreme Court's decision. This holding is clearly erroneous and indirectly contravenes this court's decision in the case of *Hamilton-Brown Shoe Co.* v. *Woolf Bros. & Co.*, 240 U. S. 258; 60 L. Ed. 634; *U. S.* v. *Carver*, 260 U. S. 482, 490.

SECOND. It found that the decree of the Washington court sitting in probate, made May 31, 1935, was without the jurisdiction of that court because the probate proceedings had been closed with the final decree of distribution entered in April, 1923. This finding is erroneous because it was made without consideration of the Washington law and because it is contrary to the decisions of the Washington courts directly deciding the very question in point. Such procedure constitutes a direct denial of the right of the State of Washington to have full faith and credit accorded by the courts of Idaho to its acts and proceedings in the courts of ALL States under Art. IV, sec. 1 of the Constitution of the United States.

2. The question of jurisdiction having been fully presented in both State courts, is it not the duty of the Circuit Court of Appeals to examine the facts appearing in the record and the laws of the two States involved (i. e. "relitigate the issues") in order to determine whether or not the present case is properly within the jurisdiction of the U. S. District Court under the Interpleader Act?

3. Where the ownership of stock in a corporation has been adjudged to be in one party by the courts of the State of Washington and to be in a different party by the courts

of Idaho, has a Federal court jurisdiction, under the Interpleader Act, to determine which of those judgments shall be given effect?

4. Is a corporation, which has been a defendant in the courts of Idaho which declared title to certain of its corporate stock to be in the plaintiff group, and which is also a defendant in an equity action pending in the State of Washington and brought to enforce a previous decree of the courts of Washington antedating the Idaho judgment and decreeing title to be in a different Washington Group, precluded by such decree and judgment from bringing an action in the Federal courts under the Interpleader Act designed to reverse one or the other of the said judgments or decrees or to restrain the continuance of the pending equity action?

5. Can the Federal Interpleader Act be availed of to decide which of two State courts, which have decided diametrically opposite to each other concerning the same res and persons, is correct in its decision, and, if both are correct, to give relief to the petitioner under the Interpleader Act?

6. Can the Federal Interpleader Act be availed of to take out of the custody of a State court, which has properly assumed jurisdiction, and out of the custody of a receiver appointed by it, certain intangible property, by ordering certain of the respondents so to dispose of the indicia of ownership of the intangible property as effectually to deprive the State court and its receiver of their power over the property?

Summary of the Argument.

Petitioner herein claims that the Washington Superior Court, sitting in probate in the Amelia Pelkes Estate, had exclusive jurisdiction over the inventoried and uninven-

toried property of the estate; that this jurisdiction was a continuing one and controlled all estate matters, including agreements among distributees made after decree of distribution, until the estate was finally closed and the executor discharged. The Washington Superior Court, even if sitting in probate, was a court of general jurisdiction empowered to decide questions of title to the assets of an estate as divided by the heirs themselves, especially when those questions were submitted to the Court by the heirs themselves in the estate proceedings prior to the closing of the same.

The final decree of that court made May 31, 1935 (R. 282) bound all parties to the same just the same as any other judgment would, and was entitled to full faith and credit in all courts. The subsequent action in equity, intended to give effect to and to aid the probate decree, was merely ancillary to the latter and a continuation of the jurisdiction of the Washington courts over the *res* and the persons.

Certain of the parties included in the Idaho Group who had appeared in the Washington estate proceedings and received property under the distribution in 1923, had, in August 1934, brought quiet title proceedings covering the Sunshine stock which was uninventoried property of the Amelia Pelkes estate. They then, in December, 1934, voluntarily filed a petition in that estate proceeding asking the distribution to themselves of the same uninventoried Sunshine stock. It was as a result of this petition and a resulting cross petition that the Washington decree of May 31, 1935 was rendered against the Idaho Group. Subsequently this group succeeded in securing a judgment in the Idaho quiet title suit in their favor diametrically opposed to the probate decree of the Washington court.

CITIZENS OF ANOTHER STATE MAKING STATE OFFICIALS, WHO ARE ACTING AS SUCH UNDER CONSTITUTIONAL STATUTES, PARTIES DEFENDANT, IN EFFECT MAKE THE STATE A PARTY TO THE ACTION AND THEREBY VIOLATE THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Let us assume that both the Washington and the Idaho State Courts correctly arrived at their decisions under their respective laws, trial rules and evidence presented. We, then, have a case where a corporation, confronted with diametrically opposed judgments of the courts of Washington and Idaho respectively with reference to the disposition of certain stock and stock dividends, has brought an action in the U. S. District Court under the Federal Interpleader Act in order to have the U. S. Court decide which state court's judgment it is to obey. The interpleader action seeks not only to save the petitioner the embarrassment of possible double vexation (and possible double liability) for the same debt but seeks to have the judicial officers of Washington (Judge Hawkins, Cheney, the receiver and the Seattle First National Bank as administrator) enjoined by a federal court from functioning as such in the Washington proceedings.

The action, in effect, made the State of Washington a party to the litigation.

The U. S. District Court is not clothed with jurisdiction under the Federal Interpleader Act to accomplish either of the results sought in the interpleader action.

Assuredly, a corporation or other person engaged or interested in litigation in two different States concerning the ownership of the same res by different groups of claimants in the different States cannot await the termination of the various suits and *then* avail itself of the Interpleader Act in order to reverse one of the State court decisions in the absence of a Federal question involved in such

decision. If, as stated by the U. S. District Court, the petitioner in intervention (the Sunshine Mining Company) is precluded by the judgment against it in the Idaho State court from bringing this interpleader suit, then it is likewise precluded from doing so by the earlier and equally definite judgment of the Washington State court sitting in probate and by the suit in equity pending in that State seeking to enforce the earlier judgment.

THE DENIAL BY THE U. S. SUPREME COURT OF A PETITION FOR A WRIT OF CERTIORARI IS NOT AN AFFIRMANCE OF THE DECISION SOUGHT TO BE REVIEWED AND NO JURISDICTION CAN BE BASED ON A CONTRARY ASSERTION.

Another and important point that we will argue more at length hereinafter is this:

Even if the jurisdictional facts as to amount of claim and diversity of citizenship required under the Interpleader Act are present, the Eleventh Amendment to the Constitution of the United States prohibits bringing one of the States into an interpleader suit, as a party respondent, by naming as respondents officials of that State, (such as Judge Hawkins, the receiver Cheney, and the administrator, in so far as such procedure interferes with his administration of the estate) who are acting in accordance with, and enforcing the laws of, that State.

Even if it is decided that, on the pleadings, the U. S. District Court had jurisdiction in the premises, that court and the Circuit Court of Appeals should still be reversed because their decisions are based on legal conclusions directly contravening the decisions of this Supreme Court.

The U. S. District Court in the present case based its decision largely upon the proposition that because this Supreme Court denied the Washington Group a petition for certiorari to review the decision of the Supreme Court of Idaho wherein that court held that the Washington courts had no jurisdiction of the subject matter and parties,

such denial by this Court was an affirmance of the decision of the Supreme Court of Idaho sought to be reviewed. (See Syllabus #8 *Sunshine Mining Company* v. *Treinies*, 19 Fed. Suppiement 587.) This is clearly error.

THE DECISIONS OF THE WASHINGTON COURTS MUST CONTROL THE DECISIONS OF OTHER STATE AND FEDERAL COURTS IN CASES INVOLVING THE INTERPRETATION OF WASHINGTON LAWS.

Again, the U. S. District Court held that the Washington Superior Court, sitting in probate, did not have jurisdiction, continuing until the estate was closed and the executor discharged, over the uninventoried assets of the estate and also supervision over extrajudicial agreements for distribution of assets made by heirs, and that the Washington court's jurisdiction was not prior and exclusive. That decision is clearly contrary to the constitution and statutes of the State of Washington. The jurisdiction of Washington courts is to be determined under Washington laws as interpreted in the decisions of the highest court of Washington, and Washington courts cannot be deprived of their jurisdiction, by the fiat of the courts of a different State or by a Federal court in disregard of the Washington laws so interpreted. An express stipulation was made in the Idaho State District Court trial, as follows:

> "that the trial court, and the Supreme Court on appeal, should take judicial notice of the laws of Washington, whether embodied in statutes or judicial decisions, to the same extent and with the same effect that a Federal court would." (See Opinion of Idaho Supreme Court in *Mason* v. *Pelkes*, 57 Idaho 10, 59 Pac. (2d) 1087; R. 186.)

Despite the stipulation, the Supreme Court of Idaho positively refused to recognize the force and effect of Washington laws, thereby denying the full faith and credit which Art. IV section 1 of the United States Constitution requires each State to accord to the public acts and judicial proceedings of every other State.

Where jurisdiction of the U. S. District Court is, as in the present case, challenged on appeal to the Circuit Court of Appeals, it is necessary for that court to determine such question of jurisdiction. If, in order to determine that question it is necessary to examine the facts set forth in the records of the cases in the two States and laws of those two States, which laws were pleaded in the record (R. 63-91 inc., R. 150-151) and of which laws the Federal courts take judicial knowledge, it is grievous error for the Circuit Court of Appeals to refuse to consider those facts and laws ("relitigate the issues"), to decide arbitrarily in favor of the decision of one State, and to ignore that of the other State.

In so doing in the present case, the Circuit Court of Appeals has denied the equal protection of the laws accorded petitioner by Section 1 of the Fourteenth Amendment and has initiated a practice clearly subversive of the following principle announced by Mr. Justice McReynolds in *Sanders v. Armour Fertilizer Works*, 292 U. S. 190, at 199, 78 L. Ed. 543, 91 A. L. R. 950, with reference to the Interpleader Act:

> "The Statute is remedial and to be liberally construed. It is broad enough to cover any adverse claims against the proceeds of the policies, no matter on what grounds urged."

ARGUMENT.

There are two different and distinct phases to the problem before the court.

The first question is:

Did the U. S. District Court have jurisdiction to entertain the interpleader action?

The second question is:

Assuming that the U. S. District Court had jurisdiction, did that court and the Circuit Court of Appeals give to the decision of the Washington State court the full faith and credit required by Art. IV, Sec. 1 of the U. S. Constitution.

Whichever horn of the dilemma this Court seizes we believe must lead to a reversal of the U. S. District Court and the Circuit Court of Appeals.

Underlying both phases of the problem is the question of the jurisdiction of the Superior Court of Spokane County, Washington, sitting in probate, to make the decree of May 31, 1935 (R. 282), whereby it decided that the title to the 15,299 shares of Sunshine Mining Company stock and the dividends corresponding to the same belonged to petitioner's assignor, John Pelkes.

First Proposition.

The United States District Court and Circuit Court of Appeals erred in their interpretation of the Washington State Probate Law and in failing to follow that State's Probate Laws as determined generally by its statutes and court decisions, and as specially determined by its courts in the present litigation.

A.

IT IS THE SETTLED LAW IN WASHINGTON THAT THE SUPERIOR COURT SITTING IN PROBATE HAS CONTINUING JURISDICTION AFTER THE ENTRY OF THE DECREE OF DISTRIBUTION; (1) TO ADMINISTER ON ADDITIONAL ASSETS OF THE ESTATE FIRST CALLED TO ITS ATTENTION AFTER THE ENTRY OF THE DECREE; (2) TO SUPERVISE AND APPROVE OR DISAPPROVE AGREEMENTS OF PARTITION BETWEEN THE HEIRS; AND (3) TO SUPERVISE THE DISTRIBUTION IT HAS ORDERED AND TO INQUIRE INTO THE ACCURACY OF RECEIPTS FILED BY THE HEIRS, ALL OF WHICH RESULTS IN A CONTINUING AND EXCLUSIVE JURISDICTION OVER THE ASSETS OF THE ESTATE FROM THE DATE WHEN PROBATE PROCEEDINGS COMMENCE UNTIL THE EXECUTOR IS DISCHARGED AND THE ESTATE IS FINALLY CLOSED.

The applicable sections of the Washington Constitution and the Washington laws are set out fully at pages 63 to 67 of the Transcript of Record, also pages 147 to 151, inc.

(1) Under the laws of Washington, it is the duty of the executor to call to the attention of the court all the assets of the estate, and it is against the public policy of the State to permit heirs or executors to agree to withhold assets from administration. If the court discovers at any time prior to the final discharge of the executor that assets have been withheld from administration, it must proceed to administer upon them. It is well established that the entry of a decree of distribution in no wise affects the court's jurisdiction to administer upon newly discovered property.

2 Woerner Am. Law. Adm., p. 1374, 1375, 1376;

Hazelton v. *Bogardus*, 8 Wash. 102, 35 Pac. 602;

Boardman v. *Watrous*, 178 Wash. 690, 35 Pac. (2d) 1106;

See also cases listed under No. (2), following:

(2) The statutes of Washington specifically make it the duty of the administrator to call to the Court's attention all the assets of the estate.

Rem.'s Rev. Stat., Sec. 1462, 1465.

The Superior Court sitting in probate has continuing jurisdiction to compel the executor to account for assets which it is contended he has not distributed.

McLaughlin v. *Barnes*, 12 Wash. 373, 375; 41 Pac. 62;

State ex rel. Reser v. *Superior Court*, 13 Wash. 25; 42 Pac. 630;

In re Dyer's Estate, 161 Wash. 498; 297 Pac. 196.

(3) Under the procedure for closing estates prevailing in Washington, the court retains jurisdiction after the decree of distribution, to supervise, approve, or, if the parties cannot agree, to order, partition.

Rem. Rev. Stats., Sec. 1533.

(4) Upon the death of the owner of real or personal property, his estate usually vests in two or more persons

in co-tenancy, or is distributed to them in undivided interests, and any one of them has an absolute right to a partition.

20 R. C. L. 725, Sec. 9.

(5) Prior to the enactment of statutes conferring upon probate courts jurisdiction to make and supervise partition between heirs, it was necessary for them to resort to independent suits to convert their undivided interests into estates in severalty.

20 R. C. L. 725.

(6) Eventually, to protect creditors, legatees and executors, the rule grew up that "proceedings for partition • • • should be delayed until the estate, as to the debts against it and legacies, may be found, upon adjudication, to be fully settled."

Thomas v. *Thomas*, 35 N. W. (Iowa) 696;

See also: Syllabus, *Beecher* v. *Beecher*, 43 Conn. 556;

Hubbard v. *Ricart*, 23 Am. Dec. (Vt.) 198.

(7) In an effort to simplify procedure, many States, including Washington, have adopted statutes which confer on courts exercising probate powers, broad jurisdiction to effect and approve partition. Such proceedings have been entertained after the entry of the decree of distribution—

(a) The contention of respondents herein is set forth in *Robinson* v. *Fair*, 128 U. S. 53, 32 L. Ed. 415, at 422, and is there held unsound, as follows:

> "It is contended that its (the probate court's) control over the estate ceased when it approved the final settlement, and, by a decree of distribution, defined the nature and extent of the interests of the heirs in the remaining estate of the decedent."

The above case held that the Circuit Court of the United States had no jurisdiction to set aside the decree of the pro-

bate court because of error. Although the case arose in California, it is authoritative here because the probate courts of California are authorized to exercise a jurisdiction similar to that of the superior courts of Washington sitting in probate with this distinction, that while under the California statute at the present time a final decree of distribution winds up the estate proceedings, it does not do so in Washington. Notwithstanding that difference this Supreme Court in the Robinson case refused to interfere in a matter where partition was made after final distribution in the probate proceedings, on the ground that the error did not go to the jurisdiction of the probate court. The Robinson decision held the probate courts to be courts of "superior jurisdiction".

(b) Other cases in support of this proposition are *McCarty* v. *Patterson*, 71 N. E. (Mass.) 112:

> "The probate Court had jurisdiction of this petition (for partition) whether the estate had been settled or was in course of settlement."

In *Earl* v. *Rowe*, 58 Am. Dec. (Maine) 714, there was a lapse of several years after the entry of the decree of distribution before partition proceedings were instituted. It was said:

> "The exercise of the power is not limited to any particular time or number of years after the estate is settled."

(8) The foregoing sequence has been adopted in the State of Washington, in *Webster* v. *Seattle Trust Co.*, 7 Wash. 642; 33 Pac. 970. Construing a case under the old territorial laws, the Court said:

> "Probate courts were authorized to partition real estate in aid of final distribution, Chap. 108 Code of 1881, and partition, in the absence of statutory provisions, is a distinct branch of equity, and yet it is quite commonly in this country within the jurisdiction of probate courts."

The Probate Code subsequently adopted gave the Washington courts the widest powers as to partition. (See Rem. Rev. Stats. 1533.) A later Washington case in which the jurisdiction of the court to make an order of partition after the decree of distribution had been entered, is *Bayer* v. *Bayer,* 83 Wash. 430; 145 Pac. 433. The situation is thus stated by the court:

> "The object of the action was (a) to vacate a decree of distribution entered in the Superior Court of King County upon a non-intervention will, and (b) to vacate a decree of partition entered in the Superior Court of Lincoln County following the decree of distribution."

Again the Washington Supreme Court held that the lower court had jurisdiction to enter this decree. This case is a notable decision in which all the earlier provisions of the Washington Constitution with regard to probate law and its construction, as decided by the court in earlier decisions, are reviewed.

(9) When analyzed, Sec. 1533 is discovered to be merely a convenient statutory method by which the probate court may enforce its decree, a power which is possessed by every court of general jurisdiction.

> "Jurisdiction once acquired is not exhausted by the rendition of judgment, but continues until such judgment is satisfied, and includes the power to issue all proper process and to take all proper proceedings for its enforcement."
>
> *Wright* v. *Suydam,* 79 Wash. 550; 140 Pac. 578.
>
> *Mutual Reserve Ass'n* v. *Phelps,* 190 U. S. 147, 47 L. Ed. 987.

The Supreme Court of Washington has twice been squarely presented with the question of whether the superior courts sitting in probate have continuing jurisdiction to administer further upon an estate after the entry of a

decree of distribution, where it appears that the executor has not complied with the statutory requirement of filing receipts, and both times it has squarely held that they have. (See *State ex rel. Reser* v. *Superior Court* and *In re Dyer's Estate, supra.*)

The rule in Washington, then, is that the heirs may dispose of the property by agreement, but the property so disposed of, and the agreement, remain subject to the court's jurisdiction and approval until receipts are approved and the executor is finally discharged; and this is indisputably the rule as to uninventoried property never called to the attention of the court, where all the parties petition the court for relief, as in the present case.

(10) Under the above powers as to the supervision of partition, and in the exercise of its general jurisdictional powers, whatever view may be taken of the probate law of Washington, upon the filing of Katherine Mason's petition seeking relief in the estate of Amelia Pelkes, the court entertaining jurisdiction, inasmuch as it had full power, was further empowered to make a binding order determining the issues presented by the petition.

Kline v. *Burke Const. Co.*, 260 U. S. 226; 67 L. Ed. 226.

B.

THE JURISDICTION OF THE SUPERIOR COURT OF WASHINGTON SITTING IN PROBATE TO DECIDE WHO WAS OWNER OF THE STOCK IN QUESTION WAS SUSTAINED BY THE SUPREME COURT OF WASHINGTON IN THIS SPECIFIC CASE.

Judge Hawkins says in his answer (R. 15, 22), referring to the two petitions for writs of prohibition presented to the Supreme Court of Washington respectively by Katherine Mason and her husband, that

> "The basis of these applications was that the Superior Court of the State of Washington sitting in probate

lacked the inherent jurisdiction to do and to hear the things and matters that court was then proposing to do and hear • • •"

"Under the laws of the State of Washington, the denial of these applications for writs of prohibition by the Supreme Court of this State was equivalent to a holding that the Superior Court had inherent jurisdiction to hear and decide the issues raised by the petition of Katherine Mason and the return of John Pelkes above referred to" (R. 22).

Second Proposition.

THE UNITED STATES DISTRICT COURT AND THE CIRCUIT COURT OF APPEALS HAD NO JURISDICTION TO ENTERTAIN THE INTERPLEADER ACTION WHICH IS THE SUBJECT OF THESE PROCEEDINGS.

A.

THE FEDERAL INTERPLEADER ACT DOES NOT AUTHORIZE A CITIZEN OF ONE STATE TO BRING AN ACTION IN A FEDERAL COURT AGAINST ANOTHER STATE.

An interpleader action under the Federal Interpleader Act cannot be brought "to compel or restrain state action". (*Worcester County Trust Co.* v. *Riley*, 302 U. S. 292, 296; 82 L. Ed. 268, 273, 58 Sup. Ct. Rep. 185, 187.) This Court in the last cited case said "a suit nominally against individuals but restraining or otherwise affecting their action as State officers, may be in substance a suit against the State, which the Constitution forbids." (Citing many cases.)

Section 24 (26) of the Judicial Code, 28 U. S. C. A. § 41 (26), known as the Federal Interpleader Act, is set out in the opinion of the Circuit Court of Appeals at p. 348 of the Transcript of Record herein as follows:

"Section 24 (26) of the Judicial Code, 28 U. S. C. A. § 41 (26), provides that the district courts of the United States shall have original jurisdiction:

"(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any * * * corporation having in * * * its custody or possession money or property of the value of $500 or more, or having issued a * * * certificate * * * or other instrument of the value or amount of $500 or more * * * or being under any obligation written or unwritten to the amount of $500 or more, if——

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such moneys or property, or to any one or more of the benefits arising by virtue of any * * * certificate * * * or other instrument, or arising by virtue of any such obligation; and

"(ii) The complainant (a) has deposited such money or property or has paid the amount * * * due under such obligation into the registry of the court, there to abide the judgment of the court. * * *

"Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) * * * (Said) court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court * * *

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same."

In the *Riley* case above cited this Court said:

> "* * * that a suit nominally against individuals, but restraining or otherwise affecting their action as State officers, may be in substance a suit against the State, which the Constitution forbids * * *" (citing many cases).

In the case at bar Judge A. W. Hawkins, as a judge of the Superior Court of Washington, J. C. Cheney, as receiver appointed by that court, and the Seattle First National Bank, as Administrator of the Estate of John Pelkes, were included as defendants in the interpleader suit.

The purpose of the action as to those three defendants was that they

> "and each of them, be immediately restrained without notice from attempting to take any further proceedings or action in regard to said stock * * *" (R. 13).

In other words the functioning of the Superior Court of the State of Washington with respect to the probating of the estate of John Pelkes and the enforcement, through the equity action then pending, of the decree in probate rendered in case No. 15946, was to be entirely stopped by the intervention of a Federal court in a matter that did not involve a Federal question. The *Riley* case (*supra*) restates the general law that such is specifically prohibited by the U. S. Constitution.

Since Judge Hawkins, his receiver Cheney, and the administrator Seattle First National Bank, were merely acting in the performance of their duties in probating an estate and giving effect to a decree of a Washington court sitting in probate—duties imposed upon them by law—any errors committed being curable by appeal to higher State courts, the language of this Court in the *Riley* case is peculiarly in point.

> "* * * it cannnot be said that the threatened action of respondents involves any breach of State law or the laws or Constitution of the United States. Since the proposed action is the performance of a duty imposed by the statute of the State upon State officials through whom alone the State can act, restraint of their action, which the bill of complaint prays, is restraint of State action, and the suit is in substance one against the State which the Eleventh Amendment forbids."
>
> (*Worcester County Tr. Co.* v. *Riley, supra.*)

Since the filing of the Petition for a Writ of Certiorari herein, the case of *Asher* v. *Bone,* 100 Fed. (2d) 315, reported in the advance sheets under date of January 30, 1939, and decided by the same Circuit Court of Appeals which made the decision in the present case, has been published.

We cite the decision now as being a correct view of pertinent law and as being in substantial conflict with the previous decisions in the case at bar. In *Asher* v. *Bone, supra,* the complainant, a resident of Illinois, sought in the Federal District Court in Idaho to recover her distributive share of an estate which had been probated in a State court of Idaho, her contention being that she had, through extrinsic fraud, committed in the probate proceedings, been deprived of such distributive share.

The Circuit Court of Appeals denied the jurisdiction of the Federal court to interfere with the Idaho probate proceedings and held that:

> "The jurisdiction to determine the interest of respective claimants on an estate in Idaho is exclusively in the probate courts of that state having jurisdiction of the proceedings and the determination thereof by such probate court, whether right or wrong, is conclusive and subject only to be reversed, set aside or modified on appeal." (Decision, p. 317.)

The record in the present case shows that the Idaho Group petitioned in the Washington probate proceedings

that the stock in question be decreed to be their property. Those probate proceedings had not then been closed. By their action the Idaho Group submitted themselves to the jurisdiction of the Washington Superior Court sitting in probate. Later, challenging that court's jurisdiction, the Idaho Group sought, by prohibition proceedings in the Supreme Court of Washington, to prohibit the Washington Superior Court from proceeding with the matter. Prohibition was denied by the Supreme Court of Washington and the jurisdiction of the Superior Court consequently upheld. It is clear that under the ruling in *Asher* v. *Bone,* the Federal court in Idaho could not interfere with the decision of the Washington Superior Court sitting in probate.

Furthermore, in *Asher* v. *Bone, supra,* one Osburn, having the requisite diversity of citizenship, had appeared in the U. S. District Court, and had objected to its jurisdiction. He, however, failed to join in the appeal to the Circuit Court of Appeals from the District Court's judgment asserting its jurisdiction. It was held by the Circuit Court of Appeals that, despite the fact that the U. S. District Court had no jurisdiction of the controversy, the decree of the U. S. District Court was binding on Osburn so far as it affected property distributed to him. (Decision, p. 319.)

The record in the present case shows that, while the probate proceedings were still open in the Washington Superior Court, the Idaho Group not only subjected themselves to the jurisdiction of that court, but were the very parties invoking such jurisdiction, and that they never appealed from the final adjudication of the Washington court's affirming such jurisdiction.

The U. S. District Court in this present action held that it had no jurisdiction to reverse the Idaho State courts. By the same token, and on the authority of *Asher* v. *Bone, supra,* and other cases here cited, it had no jurisdiction to reverse the Washington State courts. Nevertheless it has

proceeded to make the decision of the latter courts ineffective by restraining the Washington Group, who *have* properly objected to the U. S. District Court's jurisdiction and *have* appealed to the Circuit Court of Appeals, from proceeding to enforce the Washington probate decree in their favor.

B.

THE FEDERAL INTERPLEADER ACT CANNOT BE UTILIZED TO SECURE THE REVERSAL OF A JUDGMENT RENDERED BY A STATE COURT ACTING WITHIN ITS JURISDICTION NO FEDERAL QUESTION BEING INVOLVED.

The Federal Interpleader Act does not, because it constitutionally cannot, authorize a Federal court to review and affirm or reverse the judgment of a State court, there being no Federal question involved.

The U. S. District Court in its decision herein recognized the foregoing, saying:

> "Its (*i. e.* the Idaho State Court's judgment) effect is a bar to the present proceeding in so far as it seeks to deprive Katherine Mason of the ownership of the 15299 shares;" (Opinion of Judge Cavanah, R. 336).

The U. S. District Court held as follows: (Syllabus 9—*Sunshine Mining Co.* v. *Treinies*, 19 F. Supp. 587):

> "9. Where Washington Court rendered decree distributing decedent's personality and had no continuing jurisdiction, under statutes, and distributee instituted Idaho proceeding against holders of stock, who appeared, to enforce oral trust arising out of distribution of stock, and then instituted proceeding in Washington for partition of stock, resulting in decision for holders, and Idaho Supreme Court rendered decision for distributee, and United States Supreme Court denied petition for certiorari, Idaho Supreme Court decision

finally adjudicated title to stock and barred statutory interpleader action in so far as it sought to deprive distributee of title (Rem. Rev. Stat. Wash. §§ 466, 1371, 1533; 28 U. S. C. A. § 41 (26)).''

The foregoing finding is based on an erroneous interpretation of the Washington laws. It, in effect, holds that if a respondent in the interpleader action has a final judgment in his favor declaring him to be the owner of the res in question, the judgment is ''barred'' from attack ''in so far as it sought to deprive distributee of title'', by ''statutory interpleader action''.

In other words, the theory of the Court appears to be that if the effect of the interpleader action is to deprive respondent of title under an Idaho judgment the action is barred.

By the same reasoning, if the Washington judgment is equally correct and conclusive and prior, as to both jurisdiction and time of rendition, are not the respondents equally barred from attacking *that* judgment ''in so far as they sought to deprive the Washington distributee of title''?

We agree with the apparent conclusion of the U. S. District Court that the ''statutory interpleader action'' is barred if its purpose be to reverse the judgment of a State court. THERE MUST, HOWEVER, BE NO DISCRIMINATION BY THE U. S. COURTS AS BETWEEN STATE COURTS.

Since the inevitable result in this action must be either the reversal of a Washington court which had adjudicated title to one group or the reversal of an Idaho court which had decreed title to another group, it would seem that, under the logic of the decision of the U. S. District Court itself, it DID NOT have jurisdicion of the interpleader action.

If, upon examination, it results that the decisions of the Washington and Idaho courts, although conflicting, were both correct, then we have a condition described by this

Supreme Court in the case of *Worcester County etc.* v. *Riley, supra.*

> "*But conflicting decisions upon the same issue of fact do not necessarily connote erroneous judicial action.* Differences in proof and the latitude necessarily allowed to the trier of fact in each case to weigh and draw inferences from evidence and to pass upon the credibility of witnesses, might lead an appellate court to conclude that *in none is the judgment erroneous.* In any case the Constitution of the United States does not guarantee *that the decision of State Courts shall be free from error,* Central Land Co. *v.* Laidley, 159 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91; Tracy *v.* Ginzberg, 205 U. S. 170, 27 S. Ct. 461, 51 L. Ed. 755; or require *that pronouncements shall be consistent.*" (Italics ours.)

If the controversy is *res adjudicata* in Washington and equally *res adjudicata* in Idaho and no denial of a Federal right is involved, the Federal Interpleader Act cannot be invoked to cause a choice between the conflicting decisions of the respective State courts. (*Worcester County Trust Co.* v. *Riley, supra.*)

In the decision in the *Riley* case, this Court, commenting on the argument of counsel, said that counsel were confused as to

> "the possibility of conflict of decisions of the courts of the two States, *which the Constitution does not forestall.*"

and in effect decided that a Federal court cannot interfere with or review either State court decision where the denial of a Federal right is not involved.

Third Proposition.

If a Federal Interpleader Action is a proper one here, nevertheless the United States District Court and the Circuit Court of Appeals erred by failing to give the decree of the Washington State Court the full faith and credit required by the United States Constitution.

A.

THE WASHINGTON COURT'S DECREE IS ENTITLED TO FULL FAITH AND CREDIT IN THE FEDERAL COURTS, ALSO IN THE IDAHO STATE COURTS.

The other horn of the dilemma, wherein we assume that the Federal courts below had jurisdiction to entertain the bill of interpleader, presents the following:

Article IV, Section 1 of the United States Constitution, provides that

> "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State."

The Fourteenth Amendment inferentially contains the same requirement.

The foregoing mandates of the Constitution are made a duty of the Federal Courts by the provisions of Section 34 of the Federal Judiciary Act of September 24, 1789, Chap. 20, 28 U. S. C. A. § 725, which provides:

> "The laws of the several States, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the Courts of the United States, in cases where they apply."

This Supreme Court in its recent decision in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78; 82 L. Ed. 1188, 1194, held:

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in

> any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern."

In the above case the contention between the parties was as to what was the State law of Pennsylvania relating to a certain kind of injury. The Circuit Court of Appeals held that the matter was one of general law and *declined* to decide the issue of State law (as the U. S. Circuit Courts of Appeals so declined in the present case). This was held to be error and the decision was reversed.

The interpleader action involves a collateral attack on a Washington judgment, contrary to local law, and contrary to the actual Washington decisions in the instant case, and in other cases, and, if sustained, would be a denial of the "full faith and credit" accorded by the Constitution of the United States to the acts and proceedings of the Washington courts.

At pages 19 to 25 herein we have shown that, under the Washington statutes and the decisions of its courts, the Superior Court of Washington in case No. 15496 was acting entirely within its jurisdiction when it made the decree of May 31, 1935 (R. 282).

The Idaho State courts, however, decided against the jurisdiction of the Washington court notwithstanding that the Idaho Group had entered the Washington courts and had specifically invoked their jurisdiction.

In sustaining the Idaho court's decisions in this respect the U. S. District Court was probably influenced in its decision by the mistaken notion that, because the Supreme Court of Idaho had decided that the Washington court had no jurisdiction and this Supreme Court had denied petitioner a writ of certiorari to review that decision, such denial constituted an affirmance of the Idaho judgment.

This is clearly error, as this Court plainly stated in *United States* v. *Carver*, 260 U. S. 482, 490; *Hamilton-Brown Shoe Co.* v. *Woolf Bros. & Co.*, 240 U. S. 258; 60 L. Ed. 634.

The foregoing error was supplemented by the additional error of the Circuit Court of Appeals in refusing to "relitigate the issues" as it said, which meant, in fact, a refusal to consider the jurisdictional facts of record and the pertinent laws, of both Washington and Idaho, in order to determine whether the courts of those states were acting within their respective jurisdictions in deciding as they had.

B.

WHEN THE RECORD, AS IT DOES IN THE PRESENT CASE, CONTAINS THE EVIDENCE OF THE JURISDICTIONAL FACTS AND THE LAWS OF THE TWO STATES WHOSE COURTS HAVE RENDERED OPPOSING JUDGMENTS CONCERNING THE TITLE TO THE SAME PROPERTY, IT IS THE DUTY OF THE CIRCUIT COURT OF APPEALS, ASSUMING THAT IT HAS JURISDICTION OF THE ACTION, TO CONSIDER AND PASS UPON THE SAID FACTS AND APPLICABLE STATE LAWS IN ORDER TO DETERMINE WHETHER OR NOT EITHER STATE HAD JURISDICTION TO RENDER ITS JUDGMENT.

Upon appeal, the Circuit Court of Appeals held that the District Court had jurisdiction because respondents were citizens of different States and because more than $500.00 was in controversy and deposited with the Registry of the Court. It did not discuss the question of the indirect involvement of a state as a party respondent nor would it consider either the facts or the laws of the two states involved, by virtue of which each claimed the prior and exclusive jurisdiction to be in its own courts and denied categorically the jurisdiction of the other's courts.

If jurisdiction lay in the U. S. District Court then the duty of the Circuit Court of Appeals was clear:

> "The Court is to weigh the right or title of each claimant under the law of the State in which it arose and de-

> termine which according to equity is better." (*Sanders* v. *Armour Fertilizer Works*, 292 U. S. 190 at 200.)"

This the Circuit Court of Appeals refused to do. It thereupon held that the Idaho courts, having a right to examine into the jurisdiction of the Washington courts and having decided against their jurisdiction, must be sustained, without consideration of the fact that the Washington courts first obtained jurisdiction, first adjudicated the title involved, and expressly declared that the Idaho courts had no jurisdiction. This refusal to consider the facts adduced in Washington and the laws of that state is a grievous error and a violation of the full faith and credit to which Washington judicial proceedings are entitled under Art. IV Sec. 1 of the U. S. Constitution.

We further assert that, assuming jurisdiction to have been in the U. S. District Court, its refusal to perform its duty as outlined by Justice McReynolds in the Sanders case, *supra*, was a violation of petitioner's constitutional right to due process of law.

The Circuit Court of Appeals cited *Pendelton* v. *Russell*, 144 U. S. 640, 644 as authority for its refusal to consider whether or not the Washington courts had acted within their jurisdiction because the Idaho court had decided to the contrary.

We submit that the said case merely, and correctly, decides that

> "as a matter of course, the jurisdiction of every court is open to inquiry when its judgments and decrees are produced in the court of a State, and it is there sought to give them effect."

Obviously a decision of a State Court in an Admiralty matter where the United States had exclusive jurisdiction could be considered by another court to be as a nullity. However, as has been noted herein (*Asher* v. *Bone, supra*),

ne decision of a state court of general jurisdiction, sitting in robate proceedings involving property within the state, nd having jurisdiction of persons who have appeared be- ore it, cannot be questioned by the Federal courts or by ourts of other states, no matter how erroneous its decisions ay be. Furthermore, no valid reason exists or has been hown, why decisions of Washington courts are more open o question than decisions of Idaho courts.

WHEREFORE, it is respectfully prayed that the decision of ne Circuit Court of Appeals and the U. S. District Court e reversed and

(a) that they be adjudged to have no jurisdiction of the nterpleader action herein; or

(b) if their jurisdiction be sustained, that judgment in avor of Evelyn H. Treinies be directed and the decision f the Idaho State Courts be decreed void for lack of juris- iction.

San Francisco, June 1, 1939.

Respectfully submitted,

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